

ARTHUR F. PIERCE and ONEIDA	:	Order Vacating Decision and
INDIAN NATION OF NEW YORK,	:	Remanding Case
Appellants	:	
	:	
v.	:	Docket No. IBIA 94-69-A
	:	
EASTERN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 27, 1994

Appellants Arthur F. Pierce and the Oneida Indian Nation of New York seek review of a January 3, 1994, decision of the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to issue Pierce a Deputy Special Officer Commission (DSOC). Appellants have filed an opening brief. In lieu of an answer brief, the Area Director filed a request for remand.

The Area Director's decision was based on his determination that the BIA's Federal law enforcement authority on Indian reservations in the State of New York was preempted by 25 U.S.C. § 232 (1988). In his request for remand, the Area Director states that this was an incorrect interpretation of law. He further states, however, that, even admitting the application of Federal criminal laws within Indian Country in the State of New York, he believes that sound grounds exist for the denial of the DSOC. The Area Director indicates that a decision in this case may have application beyond the confines of this matter, and requests a remand so that a complete record may be prepared and a further decision issued setting forth these other reasons why the DSOC should not be granted.

Prior to its receipt of the Area Director's request for remand, the Board received a telephone call from appellants indicating a desire to respond to the request.

The Board has considered the Area Director's request in light of its knowledge that appellants desire an opportunity to respond to the request, and its own interest in the conservation of judicial resources and desire that this appeal, as all other matters before it, be finally resolved as expeditiously as possible. Although the Area Director has indicated that he continues to believe that the DSCC should be denied, his confession of legal error has altered the entire context of this matter, and has essentially vacated the decision under appeal. Although there are several ways in which the present situation could be handled, the Board believes that it is in the best interest of all concerned to allow the Area Director the opportunity to develop the record further and articulate fully the reasons for his continued belief that Pierce should not be granted a DSOC.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Eastern Area Director's January 3, 1994, decision is vacated, and this matter is remanded to him for further consideration. 1/

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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1/ The Area Director is reminded that his decision after remand may be appealed to the Board and, accordingly, should include appeal information.